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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT SEATTLE

7                   IN RE: PHENYLPROPANOLAMINE  
8                   (PPA) PRODUCTS LIABILITY  
9                   LITIGATION,

10                  MDL NO. 1407

11                  ORDER GRANTING  
12                  DEFENDANTS' MOTION FOR  
13                  SUMMARY JUDGMENT

14                  This document relates to:

15                  *Walter Bouliigny o/b/o Carrie  
16                  Bouliigny v. Bayer Corporation,  
17                  et al., No. 3-cv-2091.*

18                  Defendants Bayer Corporation ("Bayer") and Wyeth move this  
19                  court for summary judgment pursuant to Rule 56(c) of the Federal  
20                  Rules of Civil Procedure on the grounds that plaintiff's claims  
21                  are barred by the applicable prescriptive period that governs  
22                  tort actions under Louisiana law. Plaintiff opposed the motion.<sup>1</sup>  
23                  Having reviewed the motion, plaintiff's opposition and the reply

24                  <sup>1</sup>Initially plaintiff failed to timely oppose the motion;  
25                  however, on October 20, 2006, the court received a letter in  
26                  which plaintiff stated that he may have counsel who is willing to  
represent him in this case (plaintiff was previously represented  
by counsel in this matter). The court ordered plaintiff to notify  
it by December 12, 2006 whether he will be represented by counsel  
or will continue to proceed *pro se*, and in the event he will  
continue *pro se*, he must file his response to the summary  
judgment motion by December 22, 2006. Thereafter, plaintiff  
timely notified the court that he will continue on a *pro se* basis  
and filed his opposition to the motion.

ORDER

1 thereto, the court hereby finds and rules as follows:

2       The limitations period for tortious conduct under Louisiana  
3 law is governed by Article 3492 of the Louisiana Civil Code,  
4 which provides that tort actions are subject to a limitations  
5 period of one year from the date of injury or the date damage is  
6 sustained. See La. Civ. Code Art. 3492. Under Article 3492, a  
7 plaintiff has the burden of proof in establishing facts that  
8 would have the effect of interrupting or avoiding the one year  
9 limitations period when it appears on the face of his complaint  
10 that the claims were not filed within the one year time-frame.

11 *Id.* Here, according to plaintiff's complaint, plaintiff's  
12 decedent allegedly sustained her first stroke in August of 1985,  
13 yet the plaintiff did not institute his action against Wyeth and  
14 Bayer until January 28, 2003-more than sixteen years after the  
15 decedent's stroke. In his opposition, plaintiff admits that he  
16 "found out" about phenylpropanolamine ("PPA") "around 1996 or the  
17 middle part of 96." Opp. Brief at 1. He further acknowledges that  
18 he decided to file suit after learning that the product his  
19 mother allegedly ingested before her stroke contained PPA. *Id.* He  
20 claims he discovered this in the "late 90s or 2000s." *Id.*

21       Consistent with plaintiff's statements in his opposition  
22 brief is his own deposition testimony wherein he repeatedly  
23 acknowledged that he "knew" at the time of his mother's strokes,  
24 which began in 1985, and up until the time of her death in 1996,  
25 that the PPA-containing product she ingested was the cause of her

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ORDER

1 strokes. See Motion, Ex. C at pp. 55-57, 74-75, 77, 97-98, 163-  
2 164, and 261-262. Therefore, based on plaintiff's own testimony,  
3 he was on notice of his possible claim against defendants (at the  
4 very latest) at the time of his mother's death in 1996. Plaintiff  
5 did not file suit until January 28, 2003, well beyond the one  
6 year limitations period. Plaintiff has failed to establish facts  
7 that would interrupt the this one year period. See, e.g.,  
8 *Matthews v. Sun Exploration & Production*, 521 So.2d 1192, 1197  
9 (La. 1988)(holding that plaintiff will be deemed to know that  
10 which he could have learned by reasonable diligence).  
11 Accordingly, plaintiff's claims are time-barred.

12 Based on the foregoing, the court hereby GRANTS defendants'  
13 motion for summary judgment and plaintiff's claims are dismissed  
14 with prejudice.

15 DATED at Seattle, Washington this 9th day of February, 2007.

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17 BARBARA JACOBS ROTHSTEIN  
18 UNITED STATES DISTRICT JUDGE  
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ORDER